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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MEHRAN TAAVAR, Plaintiff and Appellant, v. LOVE LIVING PRODUCTIONS LLC, Defendant and Respondent.	B288420 (Los Angeles County Super. Ct. No. BC594629)

APPEAL from a judgment of the Superior Court of Los Angeles, Dennis J. Landin, Judge. Affirmed.

Carpenter, Zuckerman & Rowley, Stephen K. McElroy and Josh M. Dowell for Plaintiff and Appellant.

Manning & Kass, Ellrod, Ramirez, Trester, Robert P. Wargo and Sharon S. Jeffrey for Defendant and Respondent.

Plaintiff and appellant Mehran Taavar was hit in the head by a bar as he watched dancers perform at a nightclub. The bar fell from the ceiling when a dancer hung from it. According to Taavar, he resolved his claim against the nightclub.

Respondent Love Living Productions LLC (LLP) is the company that provided dancers to the nightclub. Taavar sued LLP for negligence, alleging that LLP " 'should have inspected, maintained or repaired the condition of the bars or equipment before the performance.' " (Taavar also sued LLP for premises liability but later "withdrew" that cause of action.) The trial court granted summary judgment in favor of LLP, concluding that LLP owed Taavar no duty, an essential element of negligence. (*Melton v. Boustred* (2010) 183 Cal.App.4th 521, 529–530.)

On appeal, Taavar raises three arguments, but fails to show the trial court erred in granting summary judgment. His argument that the factors in *Rowland v. Christian* (1968) 69 Cal.2d 108 militate in favor of finding duty are based on facts with no citation to the record and actually unsupported by the record. His argument that LLP created a dangerous condition is inconsistent with the parties' undisputed facts and is based on statements also unsupported by the record. Taavar argues that additional material facts preclude entry of summary judgment, but fails to show that any of the purported facts is relevant to LLP's duty to Taavar, the missing element the trial court found to be dispositive. We thus affirm the summary judgment.

BACKGROUND

Taavar was hit by a bar as he watched male exotic dancers at the Abbey Food and Bar (Abbey). Dancers regularly performed at the Abbey on poles and bars, "hanging from them and

swinging from and around them." The vertical and horizontal bars and poles were attached to the floor and ceiling in the Abbey. The Abbey "encouraged" the dancers to use the bars and poles.

On October 3, 2013, as a dancer was hanging from an overhead bar, the bar loosened and struck Taavar's head. Taavar represented he "resolved" his claim against the Abbey arising out of this incident.

The current lawsuit involves a negligence claim against LLP, a business that provides dancers who perform at the Abbey. LLP's principal was Devon Uribe. The parties agree that LLP "never" owned, managed, leased, or controlled the premises or business activities of the Abbey. According to Taavar, the Abbey and LLP had no agreement regarding "safety precautions, rules, or parameters to be followed by the dancers while performing at the Abbey." The Abbey paid LLP a fee for the dancers, and LLP paid the dancers.

After Taavar was injured, the Abbey hired a contractor to perform work on the bars and poles, which according to Taavar "was a potential fix for the bar, or truss, that came crashing down on October 3, 2013." Also according to Taavar, on prior occasions, the Abbey had hired the same contractor to reinforce the bars.

1. Complaint

In his cause of action for general negligence, Taavar alleged: On October 3, 2013, he was injured by a metallic bar used by a dancer that "snapped off" and hit his head. "Defendants breached their duty of care to Plaintiff when they failed to supervise, manage, control, fix and maintain said premises. Defendants would have known or should have known

of the unsafe conditions had they properly managed and maintained the premises."

Taavar also asserted a cause of action for premises liability, but later "withdrew" that cause of action.

2. Summary Judgment

LLP moved for summary judgment on the ground that it had no duty to inspect the Abbey premises before the dancers performed. Taavar opposed the summary adjudication of its negligence claim, but admitted that there was no basis for its premises liability claim.

The following facts were undisputed: The dancers working for LLP were instructed that if, in the course of performance, a dancer detected a loose bar or pole, the dancer had to notify Uribe or the Abbey manager. In June 2012, the dancers reported the poles were loose. The Abbey then added reinforcement to the poles and bars. "Between December 2012 and the incident date, none of the dancers informed the Abbey that any of the bars were [*sic*] loose or there were any problems." Other than receiving information from the dancers or Uribe about a loose bar or pole, Abbey "was solely responsible for the maintenance, inspection and security" of the poles and bars used by LLP's dancers.[1]

When Abbey learned a bar was loose, it would call a contractor to repair it. Taavar did not dispute the following fact: "Plaintiff does not allege that LLP's dancer was negligent in his performance at the time of [the] incident but, rather, merely

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[1] The record does not support Taavar's statement in his opening brief that "[t]he Abbey relied on the LLP dancers to inspect the bars and let them know if they were getting loose."

alleges that LLP 'should have inspected, maintained or repaired the condition of the bars or equipment before the performance.' "

Taavar purported to dispute the following fact: "[N]either LLP nor any of the dancers ever agreed to or ever were obligated to inspect the bars and poles before commencing any performance." Taavar cited no evidence in support of his purported dispute.

The trial court concluded that Taavar identified no evidence supporting the inference that the dancers agreed to or were obligated to inspect the bars and poles before performing. Further, even if the dancers were required to report a loose bar, there was no evidence of a loose bar prior to the event that injured Taavar. The trial court granted summary judgment on Taavar's negligence cause of action on the ground that LLP had no duty to Taavar. Taavar appealed prior to the entry of judgment. This court has discretion "to treat an appeal from an order granting summary judgment as an appeal filed after the entry of judgment." (*Taylor v. Trimble* (2017) 13 Cal.App.5th 934, 939.) We choose to do so here.

STANDARD OF REVIEW

A motion for summary judgment should be granted if the submitted papers show that "there is no triable issue as to any material fact," and that the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) " 'We review the record and the determination of the trial court de novo. [Citation.]' [Citation.]" [¶] " ' "First, we identify the issues raised by the pleadings, since it is these allegations to which the motion must respond; secondly, we determine whether the moving party's showing has established facts which negate the opponent's claims and justify a judgment in movant's favor;

when a summary judgment motion prima facie justifies a judgment, the third and final step is to determine whether the opposition demonstrates the existence of a triable, material factual issue." ' " (*Claudio v. Regents of University of California* (2005) 134 Cal.App.4th 224, 229 (*Claudio*).)

"On review of a summary judgment, the appellant has the burden of showing error, even if he did not bear the burden in the trial court. [Citation.] 'The fact that we review de novo a grant of summary judgment does not mean that the trial court is a potted plant in that process.' [Citation.] '[D]e novo review does not obligate us to cull the record for the benefit of the appellant in order to attempt to uncover the requisite triable issues. As with an appeal from any judgment, it is the appellant's responsibility to affirmatively demonstrate error and, therefore, to point out the triable issues the appellant claims are present by citation to the record and any supporting authority. In other words, review is limited to issues which have been adequately raised and briefed.' " (*Claudio*, *supra*, 134 Cal.App.4th at p. 230; see also *Shiver v. Laramee* (2018) 24 Cal.App.5th 395, 400.)

DISCUSSION

" 'To state a cause of action for negligence, a plaintiff must allege (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, and (3) the breach proximately caused the plaintiff's damages or injuries.' " (*Alvarez v. BAC Home Loans Servicing, L.P.* (2014) 228 Cal.App.4th 941, 944.) Taavar's theory was that LLP breached its duty to him because LLP " 'should have inspected, maintained or repaired the condition of the bars or equipment before the performance.' " We discuss Taavar's arguments seriatim.

A. Taavar Does Not Show that Under *Rowland v. Christian*, LLP Owed Him a Duty

Taavar's principal argument is that LLP owed him a duty based on factors identified in *Rowland v. Christian*, *supra*, 69 Cal.2d 108. In *Rowland*, the defendant invited the plaintiff to her apartment, where he was injured. (*Id.* at p. 110.) The high court stated that there is a "general principle that a person is liable for injuries caused by his failure to exercise reasonable care in the circumstances . . . . " (*Id.* at p. 112.) To depart from this principle a court must balance the following factors: "the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." (*Id.* at p. 113.)

Taavar argues these *Rowland* factors here militate in favor of finding that LLP owed him a duty. The first problem with Taavar's argument is that he provides no record citations for the facts he argues support a finding of duty. California Rules of Court, rule 8.204(a)(1)(C) requires that a party "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." This court may disregard factual assertions that are not followed by citations to the record. (*Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 826–827 & fn. 1.) By providing *no* citation to the record, Taavar has forfeited his

argument. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239.)

Second, Taavar describes wrongful conduct inconsistent with the allegations in the pleadings and the undisputed facts. It was undisputed that Taavar's theory was "that LLP 'should have inspected, maintained, or repaired the condition of the bars or equipment before the performance.' " Yet, Taavar argues that "LLP should have put their [*sic*] foot down and told the Abbey that they [*sic*] would not perform on these rods any longer until a proper system was installed." Taavar also argues that the LLP dancers should never have "been hanging on these bars in the first place because [they were] unsafe the first time they did it, and [they were] unsafe the day that Mr. Taavar was injured." Taavar's argument is inconsistent with his pleadings and with the undisputed facts. Thus, he demonstrates no error in the trial court's conclusion that LLP did not owe Taavar a duty.

Third, Taavar repeatedly mischaracterizes the evidence in the record. He states that the "apparatus . . . has a history of random, catastrophic failure," but neither the record nor the parties' separate statements support that assertion.

For all of these independent reasons, Taavar has failed to demonstrate that pursuant to *Rowland*, the trial court erred in finding that LLP did not owe Taavar a duty.

B. Taavar Raises No Triable Issue of Material Fact that LLP Created a Dangerous Condition

Relying on *Alcarez v. Vece* (1997) 14 Cal.4th 1149, Taavar argues that LLP owed a duty to Taavar because LLP created a dangerous condition. *Alcarez* explained that if the utility meter box "created a dangerous condition on land that was in defendants' possession or control, defendants owed a duty to take

reasonable measures to protect persons on the land from that danger, whether or not defendants owned, or exercised control over, the meter box itself." (*Id.* at p. 1156.) A landowner has the duty "to take reasonable precautions against risks which are or should be recognized." (*Constance B. v. State of California* (1986) 178 Cal.App.3d 200, 209.) A "dangerous condition" is "one which a person of ordinary prudence should have foreseen would appreciably enhance the risk of harm." (*Ibid.*)

Taavar's argument suffers from multiple deficiencies. First, he fails to show that legal principles applying to a landowner similarly apply to LLP—an independent contractor that provided dancers to the Abbey. Our high court has "placed major importance on the existence of possession and control as a basis for tortious liability for conditions on the land." (*Preston v. Goldman* (1986) 42 Cal.3d 108, 119; see also *Mark v. Pacific Gas & Electric Co.* (1972) 7 Cal.3d 170, 179 [nonsuit in favor of landlord proper where tenant injured by street lamp over which landlord possessed no control].) Because it was undisputed that LLP did not have control of the Abbey premises, it did not have the duty to take precautions to protect persons from alleged dangerous conditions on the premises.

Second, Taavar's purported dangerous condition—having an "adult male dancer up in the air, several feet above the audience, dancing, swinging, sitting, and hanging from a truss rod"—is inconsistent with the undisputed fact that Taavar was not claiming "LLP's dancer was negligent in his performance at the time of [the] incident." As we have previously observed, the following fact was undisputed: "Plaintiff does not allege that LLP's dancer was negligent in his performance at the time of [the] incident but, rather, merely alleges that LLP 'should have

inspected, maintained or repaired the condition of the bars or equipment before the performance.' "

Third, Taavar cites no evidence to support his claim that the dancer either created or aggravated a dangerous condition. His numerous factual assertions to this effect contain no citation to the record. For example, he argues in his opening appellate brief that the dancer's actions "caused the rod to unscrew." He provides literally no citation to the record for this proposition. The absence of record citations constitutes an independent reason to reject Taavar's argument. (See *City of Lincoln v. Barringer*, *supra*, 102 Cal.App.4th at p. 1239.)

Finally, Taavar cites *Kopfinger v. Grand Central Pub. Market* (1964) 60 Cal.2d 852 but fails to show its relevance to LLP's potential liability. *Kopfinger* considered the liability of the owner of a butcher stall and a cutting room in the Grand Central Public Market. The stall was immediately adjacent to a sidewalk. In *Kopfinger*, "some meat products fell to the ground in the course of" the butcher's business activities, specifically the deliveries of meat to the butcher. (*Id*. at pp. 856, 858.) Our high court concluded that even though the deliveries "were made by employees of meat wholesalers, independent contractors" (*id*. at p. 858), the butcher could be liable for negligence (*id*. at p. 860). Potential liability in *Kopfinger* was linked to the butcher's conduct on the day of the accident and on a public sidewalk adjacent to premises the butcher controlled, to wit, a butcher stall. *Kopfinger* is not relevant to whether LLP created a dangerous condition because it was undisputed that LLP was not in control of the Abbey premises or any land adjacent to it.

C. Taavar Fails to Demonstrate a Material Triable Issue of Fact

Taavar argues that remaining questions of fact preclude summary judgment. Taavar identifies no material, disputed fact relevant to LLP's duty—the element the trial court found to be dispositive. Moreover, Taavar provides no citation to the record to support his purported material disputed facts.[2] (See *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 60.)

D. Conclusion

Taavar demonstrates no error in the entry of judgment in favor of LLP. Given the allegations in the complaint and the undisputed facts, Taavar could not demonstrate LLP owed him a duty to inspect, maintain, or repair the Abbey premises.

We do not hold that a non–landowner such as LLP could never have a duty to conduct these functions. For example, under certain circumstances "[a]n actor who undertakes to render services to another and who knows or should know that the services will reduce the risk of physical harm to which a third person is exposed has a duty of reasonable care to the third person . . . . " (Rest.3d Torts, § 43; see also *Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 612–613 [person who undertakes to render services to another necessary for protection of third person, may be subject to liability to third person for

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[2] We decline to consider arguments Taavar raises for the first time in his reply brief, which are therefore forfeited. (*Hurley v. Department of Parks & Recreation* (2018) 20 Cal.App.5th 634, 648, fn. 10.) Moreover, Taavar's reply brief contains no citation to legal authority or the record on appeal. (See *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368.)

failure to exercise reasonable care]; *Schwartz v. Helms Bakery Limited* (1967) 67 Cal.2d 232, 235 ["by undertaking to direct the child to an assigned rendezvous with the truck the defendants assumed a duty to exercise due care for his safety"].)

These principles do not apply here. Taavar did not allege that LLP undertook to inspect, maintain, or repair the Abbey. Moreover, Taavar identified no evidence to dispute the following fact: "[N]either LLP nor any of the dancers ever agreed to or ever were obligated to inspect the bars and poles before commencing any performance." The trial court emphasized the undisputed nature of this fact. Taavar does not challenge that finding by the trial court. Given the allegations and the undisputed facts, the trial court properly granted summary judgment in favor of LLP. As the trial court concluded, Taavar failed to show that LLP owed him a duty.

DISPOSITION

The judgment is affirmed. Love Living Productions LLC is entitled to its costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.